

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA . 4:15-CR-00263
VERSUS . HOUSTON, TEXAS
ASHER ABID KHAN . DECEMBER 13, 2019
. 1:42 P.M.

TRANSCRIPT OF RESENTENCING
BEFORE THE HONORABLE LYNN N. HUGHES
UNITED STATES DISTRICT JUDGE

APPEARANCES

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Proceedings recorded by mechanical stenography. Transcript
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PROCEEDINGS

THE COURT: Where is your client?

MR. ADLER: He's here.

THE COURT: You don't want him to sit with you?

MR. ADLER: He didn't want to sit with me, Your Honor.

THE COURT: Our nation has struggled with terror, whether the Islamic terrorists of today or the Southern Separatists in 1861, which caused about 700,000 deaths; the Haymarket bombing in Chicago in 1886, killing seven policemen and four civilians; the Wall Street bombing of 1920, 38 people dead; a Puerto Rican separatist group shooting five members of Congress from the Visitors Gallery of the House of Representatives; Timothy McVeigh's bombing of Oklahoma City in 1995, leaving 168 people dead; and, of course, most recently, the bombing of the World Trade Tower with 2,726 deaths.

In the same class, we have had four presidents assassinated: Lincoln, Garfield, McKinley and Kennedy. We have had several known attempted assassinations: Andrew Jackson, who apparently was stubborn enough that the bullet went in a different direction after meeting him; Franklin Roosevelt, the gunman missed, and they got the mayor of Chicago; Truman, they tried to force the front door of the Blair House where the Trumans were living while the White House was refurbished. Kind and gentle Gerald Ford had two people shoot at him that we caught, and, of course, Ronald Reagan,

1 leaving a speech.

2 We have survived these attacks on us and our
3 government. We have thrived despite them because we have the
4 rule of law. Our Constitution cabins government, the only way
5 to protect freedom. It is a complex system. It has
6 presumptions of innocence, public courts, a ban on cruel and
7 unusual punishment, and critically we banned arbitrary
8 government. It has to under the Constitution work through
9 reason, not through anger or power. Our justice serves a
10 narrow list of goals. It does not serve revenge.

11 We are here to resentence Mr. Khan. I have read
12 a whole lot.

13 Ms. Ferko, is there anything in particular you
14 would like to add?

15 MS. FERKO: No, Your Honor. Well, Your Honor, counsel
16 for the United States --

17 THE COURT: Would you come here so you can use the
18 microphone without throwing your back out?

19 *(Compliance)*

20 MS. FERKO: Is that better?

21 THE COURT: Yes, ma'am. It should be easier for you.

22 MS. FERKO: It's a little easier for me, Your Honor.

23 THE COURT: I don't expect you to be comfortable in
24 here.

25 MS. FERKO: We just would like to state that as far as

1 the objections to the PSR, that I do believe that Mr. Adler and
2 the United States agrees that the terrorism enhancement should
3 apply in the calculation of the guidelines, which is one of the
4 reasons we are here for the resentencing.

5 We would also agree --

6 THE COURT: It's the only reason we are here but --

7 MS. FERKO: Your Honor, we would also agree, Your
8 Honor, that the two points was not a part of the appeal, so,
9 therefore, that the adjusted guideline range for Mr. Khan would
10 be 38, not 40 as deemed in the original PSR. And that's
11 indicative of that.

12 Your Honor, the United States is asking for a
13 sentence of 180 months. We are asking for the lifetime
14 supervision to be imposed upon Mr. Khan's release after such a
15 sentence, and we are also asking for the conditions
16 specifically regarding the lifetime supervision that the
17 probation office has recommended in its appendix to the PSR,
18 which would include, Your Honor, that the defendant must not
19 attempt to contact, communicate, interact with any form of
20 individual of any terrorist organization or especially
21 designated global terrorist entity as designated by the United
22 States.

23 THE COURT: Slow down.

24 MS. FERKO: Yes, Your Honor.

25 THE COURT: Not everybody hears as fast as you can

1 talk.

2 Must provide the probation office with access to
3 any financial information and authorize the release of that
4 financial information, and the probation office will share
5 that -- may share that information with the U.S. Attorney's
6 Office and other law enforcement entities, and that the
7 defendant shall not possess or use the computers as defined in
8 18 USC 1030(e) (1) or electronic communications or data storage
9 devices, media, unless approved in advance by the probation
10 officer and subject to the probation office's scrutiny and
11 search.

12 MS. FERKO: Your Honor --

13 THE COURT: Why don't you just let Putin tell you what
14 he is doing?

15 MS. FERKO: Your Honor, we feel that these conditions
16 are somewhat standard in these cases as far as the supervision
17 is concerned.

18 With Mr. Khan, the United States recognizes that
19 the sentence that was initially imposed by this Court of 18
20 months, Your Honor, that's a 90 percent reduction of the
21 recommended guideline sentence.

22 The United States believes, based upon the facts
23 that are in the PSR, the additional facts that have been
24 litigated and that are in all of our memorandums that I know
25 this Court has read, Your Honor, Mr. Khan's -- he should be

1 sentenced to a sentence of 180 months. He does not deserve
2 the 90 percent discount which was given the first time.

3 And at this time, I'm welcome to your questions.

4 THE COURT: What is the upper limit of the --

5 MS. FERKO: The limit is 15 years, Your Honor, which
6 is 180 months. The actual guidelines exceed the recommendation
7 of the maximum statutory of the sentence that Mr. Khan was
8 facing at the time he committed these offenses.

9 THE COURT: I may come back to you.

10 MS. FERKO: Yes, Your Honor.

11 THE COURT: Mr. Adler?

12 MR. ADLER: Thank you, Judge.

13 Ms. Ferko is correct that I have not objected to
14 the terrorism enhancement; however, that should not be
15 interpreted by this Court or anyone in attendance as a signal
16 that I believe the terrorism enhancement is appropriate, but I
17 do think under the current scheme of sentencing, that that
18 enhancement should be applied.

19 And then, as the probation officer has pointed
20 out, I think, on two occasions in the addendum, even if it is
21 applied, the Court has discretion to sentence Mr. Khan anywhere
22 up to the maximum sentence, and that includes reimposing the
23 sentence that the Court previously imposed.

24 Mr. Khan's conduct obviously was something the
25 Court considered at the first sentencing hearing, both his

1 criminal conduct and the other aspects of his life.

2 Since that last sentencing, Mr. Khan has served
3 his time in prison without disciplinary issues. He has
4 returned to his family and friends. He is reenrolled at the
5 University of Houston and has continued his education and is
6 continuing to work.

7 So I would ask the Court to consider -- strongly
8 consider reimposing the sentence that the Court found
9 appropriate at the last sentencing hearing because things have
10 only gotten better as far as Mr. Khan's conduct since that
11 time.

12 And I would remind the Court that Mr. Khan's --
13 some of the factors the Court should consider are Mr. Khan's
14 age at the time he committed the offense and his maturity at
15 the time he committed that offense, his family and social
16 structure. Many of his family are here today. Some of his
17 friends are here, as well. In fact, I received one letter -- I
18 just want to read a little portion from it. It is from
19 Mr. Justice Currey.

20 Mr. Currey, could you stand up for a moment just
21 to identify yourself? Thank you.

22 Mr. Currey wrote, "My name is Justice Currey.
23 I'm a former United States Marine. I am currently a
24 student" --

25 THE COURT: There is no such thing as a former marine.

1 MR. ADLER: What's that?

2 THE COURT: There is no such thing as a former marine.
3 That man is a marine.

4 MR. ADLER: He is a -- he is no longer serving in the
5 Marine Corps at this time, Your Honor, and currently a student
6 at Lone Star Community College.

7 "I'm writing in regards to my good friend Asher
8 Khan. I met Asher back in my early years of high school
9 through some other friends of mine. Right off the bat, I was
10 astonished by how kind and accepting Asher was. Sometimes I
11 would go to youth nights with him and my few friends at the
12 time. And even though I hardly knew the guy, he vouched for me
13 and ensured I was included in everything. Throughout the many
14 years we spent together, he became more than just a good friend
15 but also an example of behavior and discipline.

16 "I mean it when I say that his respect for
17 others, and particularly his family, made me take another look
18 at myself. Whenever he spoke to his parents, he did so
19 politely and never spoke back. When it came to his studies, he
20 was dedicated and studious.

21 "I say that meeting Asher has helped me to become
22 a better person, and I hope that whoever hears this understands
23 the type of person that Asher truly is.

24 "I am not the best at expressing my thoughts and
25 writing however, but if you would like any more information or

1 have any questions, feel free to contact me."

2 THE COURT: They have a course for that. At the
3 University of Houston, they have a course for that.

4 MR. ADLER: For expressing oneself?

5 THE COURT: Repository writing.

6 MR. ADLER: I may take it after this case.

7 So his friends and family network remain strong
8 and intact. He was working before this case began. He has
9 worked during this case. He worked during prison. I filed
10 with the Court a letter from his employer at the prison where
11 he was tutoring other inmates. I don't think I frankly in 26
12 years have ever gotten a letter from a BOP person willing to
13 vouch for an inmate. And I have also included the letter from
14 his current employer who he continues to work for as a pizza
15 delivery person, I believe.

16 His volunteer work started before this case
17 began. It has continued through this case and continues to
18 this day. And it is in primarily three areas that he has been
19 volunteering; however, all three have one purpose, one goal,
20 and that is to stop anyone else from making the mistake that he
21 made.

22 He has spoken weekly at the University of Houston
23 where he and some of the other students set up a table and are
24 willing to discuss some of these issues that online extremist
25 groups use to attract young men and woman into their folds, and

1 he obviously is a voice with considerable authority about how
2 easy it is to make a misstep and go down the wrong path.

3 Beyond just speaking to students in person, he
4 agreed to submit to an interview. That is now on the Internet.
5 It is a podcast -- I submitted the link to the Court -- where
6 he talks about how much this decision has ruined his life and
7 how much he does not want to see anyone get suckered into this
8 kind of propaganda.

9 And then lastly, Judge, Mr. Khan was asked to
10 participate in a program that's actually ironically sponsored
11 by the Department of Homeland Security in which an organization
12 here in Houston is trying to -- well, not trying. They have
13 established a program where they are training the trainers.
14 And by that, I mean they are training community leaders,
15 religious leaders, school officials, athletic coaches, all of
16 the people that young individuals might come in contact who are
17 being trained to look out for signs that a young person might
18 be susceptible to either extremist propaganda or gang
19 recruitment efforts.

20 Mr. Khan's insight into how he fell into this and
21 how he made this terrible mistake, I was told by the
22 individuals running this program and that are training the
23 trainers and have created this guide, that Mr. Khan's comments
24 were beyond invaluable; that the people now have firsthand
25 knowledge from a firsthand experienced voice as to what they

1 should be looking for. And so when these people go out to
2 train other members of the community, the idea is that Mr. Khan
3 hopefully has played a role in stopping other people from doing
4 this, as well as other people from suffering what the victim in
5 this case, Mr. Garcia, suffered and his family has suffered.

6 The Court is aware that the Fifth Circuit
7 indicated that whatever sentence -- has indicated in a variety
8 of opinions that whatever sentence this Court imposes should be
9 justified. Although Ms. Ferko and the government characterize
10 it as a 90 percent discount, whatever the number is, it is up
11 to this Court to decide. The Supreme Court is clear on that,
12 and that if we are to give any weight at all to both Supreme
13 Court precedent and even the sentencing scheme that the
14 guidelines reflect, this Court has the discretion, so long as
15 it is properly justified, to sentence Mr. Khan to anything up
16 to the statutory max. He served 18 months. The Court felt
17 that was appropriate at the time, and, as I said, I believe it
18 is even more appropriate now, and I know Mr. Khan would again
19 like to address the Court before a decision is made.

20 THE COURT: Certainly.

21 Mr. Khan?

22 THE DEFENDANT: Sir, I wrote my thoughts down, if I
23 may.

24 THE COURT: Certainly.

25 THE DEFENDANT: Your Honor, I was released from prison

1 this past June. Prison was nothing like I have ever
2 experienced before. It forced me to think about my life and
3 the many blessings that I have. Your Honor, I realized in
4 prison how much I took freedom for granted. I spent every day
5 wishing I could go back and change my decisions. The guilt ate
6 away at me, thinking how things would have been different if I
7 had just thought rationally rather than emotionally and had not
8 been so close-minded.

9 I used my time in prison to plan how I could
10 better myself and make the most of my life when I was released.
11 I thought about how I could productively share my experiences
12 in hopes of deterring someone, anyone, from making the same
13 mistakes that I made. I realized how short life really is and
14 nothing is worth throwing your life away for or hurting those
15 who you love and who love you.

16 Thank you, Your Honor, for giving me the
17 opportunity to speak.

18 THE COURT: Certainly.

19 Yes, ma'am?

20 MS. FERKO: Your Honor, the United States would just
21 like to comment on what Mr. Adler stated and what Mr. Khan just
22 said. Your Honor, the United States' concern is when Mr. Khan
23 committed this offense, he was of a young age and immature and
24 impressionable. Mr. Khan is still of a young age, impressible,
25 and of a concern.

13:59 1 And while I understand that this Court may not be
2 inclined to change the original sentence of imprisonment, the
3 United States would stress, Your Honor, would ask for then the
4 actual allowable lifetime supervision of Mr. Khan with those
13:59 5 conditions.

6 THE COURT: He is not going to be young forever.

7 MS. FERKO: I understand, Your Honor. That can maybe
8 be readdressed at a later point in time.

9 Mr. Khan in his podcast -- I have listened to
14:00 10 it -- he comments on the failings of his parents. And the
11 article in the Chronicle that appeared this morning when he
12 spoke to a reporter, he comments on the fact that he wanted --
13 he knew he was coming back, and that's essentially not true,
14 Your Honor. He knew his parents were tricking him. And, Your
14:00 15 Honor, as far as the timing, whether he made a call and
16 realized his mother was there or not, his statement to his
17 friends that were interviewed 15 months after he returned upon
18 his arrest stated that Mr. Khan's mother wasn't at the airport.
19 Mr. Khan's mother was picked up at a hospital off of Beltway 8.
14:00 20 Mr. Khan himself told his friend, Mr. Zia, the next day that
21 his parents had lied to him, and, you know, he came back for
22 nothing and that his parents confiscated his passport. And so
23 he wasn't permitted --

24 THE COURT: Smart parents.

14:00 25 MS. FERKO: It is a smart parent, Your Honor, but it

1 doesn't necessarily reflect that the defendant's action was one
2 of, I have made a mistake, as Mr. Adler says. Mr. Khan never
3 stopped for, at least what the government can prove to this
4 Court if it was done at trial, for an eight-month period after
5 his return of propagation for ISIS and Al-Baghdadi and to
6 encourage his friends that this was the right path somehow.

7 Your Honor, while now Mr. Khan is before you
8 saying that, you know, this was a mistake and I'm telling
9 others not to do this because I don't want to go to prison, I'm
10 pretty positive Mr. Khan doesn't want to go back to prison.
11 But, Your Honor, the sentence of 18 months, again, the United
12 States believes is insufficient, and it is a 90 percent
13 discount and that Mr. Khan, while he did plead guilty, Your
14 Honor, and accepted responsibility, there is more to that than
15 just a quick sentence, a short sentence and a short time of --
16 a period of supervised release.

17 Mr. Khan is telling this Court what it wants to
18 hear, and the articles in the paper that have been written
19 about Mr. Khan, that is Mr. Khan's narrative.

20 THE COURT: I'm sorry. There is a whole lot of
21 government narrative in there too.

22 MS. FERKO: There is some, Your Honor.

23 THE COURT: There is a whole lot.

24 MS. FERKO: But Mr. Khan's narrative is that it was,
25 you know -- Mr. Sixto died over there, and that was on him, but

1 it was at constant encouragement of Mr. Khan to go and fight
2 with ISIS and to join ISIS and I will continue to help you if
3 you need it.

4 So, Your Honor, the government is just asking you
5 to consider -- again, the sentence that we're asking for is the
6 full 480 months. Your Honor, we are asking for that lifetime
7 period of supervision, along with those restrictions on the
8 media, on his phone, on his computers with the regulation by
9 the probation department. And if Mr. Khan truly is who he says
10 he is and everything is going to be fine, Your Honor, then that
11 imposition shouldn't be much of one.

12 Thank you.

13 MR. ADLER: Briefly, Judge, I hope Ms. Ferko misspoke
14 when she said she was seeking a 480-month sentence.

15 MS. FERKO: I'm sorry. 180-month sentence.

16 THE COURT: She is always very enthusiastic.

17 MR. ADLER: Judge, we can go back and forth at this
18 probably ad nauseam. I think Ms. Ferko and I, when we are long
19 retired, will probably still not agree on what the appropriate
20 sentence is, with all due respect to her.

21 THE COURT: You each have distinct roles to play.

22 MR. ADLER: I will just say this, Judge: If the
23 government is presenting the idea that Mr. Khan has done these
24 volunteer efforts, given these interviews in an effort to
25 affect public opinion or the Court, I will tell the Court as an

1 officer of this Court that the reality is Mr. Khan didn't want
2 anyone to know about his efforts. Okay. He was very reluctant
3 to speak. With all due respect to the media, he didn't want
4 them to know what he was doing at the University of Houston.
5 He -- his decision to get involved with the training program,
6 the City of Houston training program was -- his initial
7 response was: Who is going to know about this? I don't want
8 to bring more shame on my family and myself. He did it for the
9 purest of reasons. He truly does not want anyone to be facing
10 the government on these kind of charges. He truly does not
11 want anyone to be facing prosecution for joining a gang. He
12 absolutely recognizes the stupidity, the naivety that he
13 displayed back when he was 19. He is 25 years old now, and I
14 understand that Ms. Ferko feels that that is a young
15 impressionable age. I would point out that --

16 THE COURT: For most of us men, 46 is still young and
17 impressionable.

18 MR. ADLER: In the Marine Corps, Mr. Khan would be the
19 equivalent of a lieutenant or a captain at this point, so it is
20 not such a young and impressionable age perhaps as the
21 government would want you believe. He has matured. Prison
22 helped mature him. His family has helped mature him. And I
23 think all of that is demonstrated by his sincere desire and the
24 numbers of hours he has put in trying to dissuade people from
25 going down the path that he went down. So I would ask the

1 Court to reimpose the sentence that he has served.

2 As far as the other conditions, we don't really
3 have a problem with it, frankly, Judge, with the exception of
4 the computer use, to make Mr. Khan ask the probation office
5 every time he wants to use a computer or a cell phone is going
6 to be a monumental amount of added work for the government and
7 for the probation office. But as far as the time that he is
8 on, I think the Court can impose a reasonable amount of
9 supervised release whereby the Court certainly, and perhaps
10 even the government, would be assured that he is not that
11 19-year-old -- I almost said a word I shouldn't say in court,
12 but it begins with "dumb."

13 THE COURT: I said that last time. The problem with
14 dumb is it can have very dangerous consequences.

15 MR. ADLER: No doubt, Your Honor. But my point is I
16 think a term of supervised release can be imposed that ensures
17 everybody, if they are willing to take a fair assessment of
18 Mr. Khan, that he is not going down the road of any criminal
19 conduct for the remainder of his life.

20 THE COURT: For guideline calculations, he gets the
21 terrorism enhancement. There are reasons to depart downward.
22 A practice, irregular probably, that when the government brings
23 me a nine-defendant case and they want to make a deal with a
24 couple of them, I ask them to order them in significance, and
25 nobody gets a sentence higher than whoever they say is the

1 kingpin. So if they want to let the kingpin go back to his
2 yacht after two years, then nobody goes -- there are exceptions
3 because some people have 73 earlier convictions and so that's
4 part of the offense.

5 Mr. Khan has no criminal history other than the
6 one I gave him. He has, to the best of our knowledge here, no
7 drug use. If he is truly a Muslim, he doesn't drink. He
8 studied to improve his mind, and derivatively his judgment,
9 while he was in custody. He is doing it now. He works a very
10 distinguished profession. Who doesn't love a pizza delivery
11 guy? It is conceivable that his effort in dissuading students
12 from fanaticism is a front, but he is doing it, and that's
13 doing some good.

14 He was impressionable, and I hesitate to make
15 that any direct correlation with age. He was teenage stupid
16 where he exercised abysmal judgment; however, we have to
17 consider that in light of when you use the word "terror."

18 What he did is talk about Jihadism or
19 unprincipled murder and decided that was more exciting than
20 whatever he was doing in, I guess, high school at that point.

21 I very carefully read all of the transcripts that
22 I have been afforded of communications between Garcia and
23 himself, and at the end, it's Garcia that's urging him to come
24 back, and don't go away, and this is a great deal. So I think
25 they were equally enthusiastic about it. But Khan, whether he

1 believed the phone call about his mother or not -- whether he
2 likes his mother or not, I don't know, but it doesn't matter.
3 He balked and left. His material support was not through
4 crates of AK-47s or thousands of dollars, much less millions.
5 It was what money he had left over, which must not have been
6 much. He was using some kind of prepaid card to get on the
7 flight back.

8 As terrorists go, he has to be on the low end.
9 Had he gotten there and succeeded as a terrorist, he would
10 belong higher up than he belongs here.

11 And Garcia was not recruited. The conversations
12 make it clear they both were interested. They both wanted to
13 do it. They encouraged each other. It was no different than
14 two guys signing up for the Marines, except for, of course, one
15 has a noble purpose and one has a despicable, inhumane purpose,
16 which is a big difference.

17 There is no evidence that Mr. Khan possesses any
18 talents of leadership or gunsmithing, logistics of anything
19 that might be an especially useful tool, had he ever made it.
20 And it's hard to remember at which time who is finding whom the
21 most, but some of the conversations are about supporting Iraq
22 against Syria, or Syria against the Kurds. Everybody
23 apparently hates the Kurds.

24 He has made obvious steps toward rehabilitation.
25 The data are that four out of all of the terrorist convicts

1 have committed new crimes after serving their time. They were
2 not necessarily -- in fact, I don't think any of the four who
3 got out went back to terrorism, did they?

4 PROBATION OFFICER: No, Your Honor.

5 THE COURT: Two of them in prison, at least one of
6 whom went back to trying to recruit terrorist buddies. But now
7 I have to add that the number who have gotten out is probably
8 relatively small.

9 Is that 400 who had been released?

10 PROBATION OFFICER: I don't know, Your Honor.

11 THE COURT: I'm not sure whether it is 4 or 500 who
12 have been released, or just the 4 or 500 who have been
13 convicted, but those with life sentences will not be in the
14 position to do that.

15 He has got good reasons not to go back to
16 committing crime, the education he has been working on. He has
17 friends. And this probably won't sound right, but he has
18 friends who are not family and probably not Muslim. And so he
19 has influences that are important to him that are unlikely to
20 be conducive to his returning to wanting to fight in the Middle
21 East. And I am not in any way suggesting that anybody in the
22 family was doing that, but it is a breadth of support. It's
23 hard to do much that you can say rehabilitates somebody when
24 they didn't do anything significant that you can undo. Bought
25 a plain ticket and made some cell phone calls and then quit

1 before it started. That's the important consideration. That
2 terror is cowardly and about seven other things that are
3 disgusting and inhuman, we must make sure that we do not in our
4 zeal to punish terrorists become more like them.

5 Somebody famous said, Choose your enemies
6 carefully because you will become like them.

7 His motivation was weak. He left voluntarily and
8 he cooperated with law enforcement. Is that not true?

9 MS. FERKO: Your Honor, Mr. Khan after his guilty plea
10 did speak with law enforcement on one occasion. I don't
11 believe Mr. Khan had much information to provide at that point.

12 THE COURT: I struggle with low-end people making
13 deals. They don't have anything to offer.

14 MR. ADLER: Ms. Ferko is essentially correct. I would
15 just add, Your Honor, that it is the defense position that it
16 was -- the government was very reluctant to be willing to meet
17 with Mr. Khan to hear what he had to say. They were not very
18 interested at the time. Maybe that's changed. I'm sure he is
19 still willing to speak with them but, yes, he did meet with
20 them and answer their questions.

21 THE COURT: The recitation of his activities suggest
22 that he doesn't have a lot to say.

23 He doesn't need a lot of retribution because what
24 he did do was so minuscule. Yes, it could have been worse, but
25 I'm not trying him on what he could have done. I'm trying him

1 on what he did do.

2 MS. FERKO: Your Honor?

3 THE COURT: Yes, ma'am.

4 MS. FERKO: I would just say the government -- I guess
5 that's where we deviate in our view of the case in that
6 Mr. Khan --

7 THE COURT: That has never happened to us before.

8 MS. FERKO: I understand, Your Honor. But, Your
9 Honor, Mr. Khan did provide -- Mr. Khan is the but-for of this
10 case. Mr. Khan -- but for Mr. Khan, you know, Mr. Sixto
11 Ramirez wouldn't have known about how to get a passport, how to
12 get the flights. You know, he provided all those direct links
13 --

14 THE COURT: He helped him, but he made the decision.

15 MS. FERKO: Sure, Your Honor. And then once he left,
16 Your Honor, but for Mr. Khan providing Mr. Zuhbi, who is also
17 under the indictment, the smugglers' information, the
18 smugglers' WhatsApp chat name and the Facebook contact, you
19 know, Mr. Garcia wouldn't be able to do anything. He would
20 have left. I mean, he didn't have that information. Mr. Khan
21 did, and Mr. Khan provided it to him.

22 THE COURT: But not commercially. They were friends.
23 He even gave him his money.

24 MS. FERKO: He did, Your Honor.

25 THE COURT: And the government says that's material

1 support.

2 MS. FERKO: Because, Your Honor, the money was given
3 with the instructions to go join ISIS, which is the enemy of
4 our state. I mean, so this is --

5 THE COURT: He said he didn't have any money left. He
6 gave him the money. And he said later on in the conversation,
7 When I get back, if you need more money, call me.

8 MS. FERKO: Right.

9 THE COURT: There was nothing specific about, this is
10 for a rifle, this is for ammunition, this is --

11 MS. FERKO: But, Your Honor, it was for the purpose
12 for Mr. Garcia to get with ISIS, to become that soldier with
13 ISIS.

14 THE COURT: He understood that Mr. Garcia was on his
15 way to do something wrong.

16 MS. FERKO: Yes, Your Honor, he did.

17 THE COURT: He understood that, but he is not -- the
18 word "material" in the statute is kind of peculiar. Does it
19 mean material in the fact that it's subject to being touched or
20 whether it is being pulled? Or does it mean it is a
21 significant amount? It's your statute.

22 MS. FERKO: Right. I think we would argue that the
23 material support that he provided was the instruction, the
24 finances, and actually the person to ISIS. And I think that's
25 what Mr. Khan pled guilty to.

1 THE COURT: Yes. But the support he shared was
2 traveling with him and then giving him a phone number when he
3 bailed on him.

4 Was it Mr. Khan who was confined to the house for
5 a while and then confined to a house in the gym at the
6 University of Houston and then slowly expanding pretrial?

7 MR. ADLER: As the Court may recall, I was not the
8 original lawyer on the case. Mr. Berg was and he took
9 employment with the District Attorney's Office. I don't
10 remember, but I think his conditions have generally --

11 THE COURT: Well, ask him.

12 *(The defendants confers with his attorney)*

13 MR. ADLER: That is correct.

14 THE COURT: So I let him go buy new underwear so he
15 could go to school.

16 MR. ADLER: That's correct.

17 THE COURT: Which displeased a lot of people.

18 MR. ADLER: I do remember there was a trip to buy some
19 clothes.

20 THE COURT: So, in sum, the nature and circumstances
21 of the offense, I have covered that in some detail, being as
22 low level and as least significant as I think you could have.
23 The history and characteristics of the defendant are all highly
24 positive. He was -- had a life before he decided to go crazy,
25 and when he returned and was apprehended, he had already gone

1 back to his normal life and pursued it as best he could in
2 prison and has pursued it in the six weeks or so he has been
3 out. Is that about right?

4 MR. ADLER: All total it's actually about six months
5 now.

6 THE COURT: Six months. He went back to doing what he
7 should have done all along with no prodding. He is studying to
8 be seriously constructive and not leaving him any position of,
9 gosh, I'm out now, but I can't make a living doing anything
10 because I didn't even stay in school past the eighth grade, or
11 something. He has done the things to build a responsible self.
12 The offense is serious, but within those that are serious and
13 things that make up most people's impression of terror, the
14 offense is on the extremely low end, the offense, and that's
15 what we should punish, not what other people and other times
16 and frequently other countries have done.

17 I don't believe there is any reason to further
18 protect the public from the crimes of this man. I don't think
19 there will be any. But he would have to be really stupid to
20 recontact -- please find a seat and make yourself
21 comfortable -- of this nature. And he's getting vocational
22 training in two ways, from the experience of working and from
23 going to college and trying to get qualified.

24 Needless to say, his criminal history at six is
25 imaginarily very high, but he didn't do anything to earn the

1 six except commit the crime he committed that was covered by a
2 statute, or a guideline -- it is a guideline -- that magically
3 gives any terrorist a preexisting top-of-the-limit criminal
4 history. So that's overstated. I realize it may sound low,
5 but the experience he has had of a year and a half in prison
6 after an American-teenager, high-school existence was a shock.

7 The statistics that we have are that these
8 crimes, unlike drugs and armed robbery, do not seem to be a
9 permanent part of a person's character. He was motivated to
10 join in by a misbegotten imagination of what was going on in
11 the Middle East. He left voluntarily. Actually, he left
12 before he got there, and he cooperated with law enforcement and
13 will continue to do so. Therefore, I vary to an 18-month
14 sentence and five years of supervised release. No fine. No
15 restitution.

16 MS. FERKO: Your Honor, can I ask, for purposes of the
17 record, are you adopting the findings of the PSR for the
18 guideline calculation?

19 THE COURT: Yes, ma'am. They start with him being a
20 terrorist.

21 MS. FERKO: Right. And as indicated in the PSR, Your
22 Honor, the guideline range and then the maximum of 180 months.

23 THE COURT: Most of all, he is a terrorist and he gets
24 the terrorist enhancement. Otherwise, I didn't have to go
25 through explaining why I was departing down from that.

1 MS. FERKO: That being said, Your Honor, the United
2 States would --

3 THE COURT: Apparently my inarticulation said 19
4 months? I said 18.

5 MS. FERKO: You said 18. Your Honor --

6 THE COURT: Wait. I'm not through. Can you wait a
7 minute?

8 MS. FERKO: Yes, Your Honor.

9 THE COURT: Without ease of access to a personal
10 computer and a cell phone would render him unemployable. It's
11 gone from being an exotic means of doing all kinds of things to
12 just an essential part of any job and most personal lives. But
13 he can tell -- he will tell probation his -- it's not his email
14 address. It's --

15 MS. FERKO: As far as with the phone, the computer?

16 THE COURT: You get a number. Where is a computer
17 person when I need it.

18 THE LAW CLERK: The IP address.

19 THE COURT: The IP address. That's pretty good for an
20 old person. He will give him the numbers, you know, in his
21 email address, but if he has to appear, it has a little number,
22 which is what they ultimately track. I'm not authorizing you
23 to track him, but you have them if you need to.

24 MS. FERKO: I guess what Your Honor -- I think what
25 the appendix was asking for along with -- and I don't want to

1 make it sound like he has to call the probation office every
2 time he uses his phone or his computer. I just -- I think that
3 the probation office wanted to have the ability to look at his
4 computer and, you know, ask him if there is a certain
5 application on it or to check on WhatsApp or Kik or any of
6 these multitude of messaging things, if there is any concern by
7 the probation officer during his period of supervised release.

8 I don't think it was a matter of asking whether
9 every time he would log on a computer, he would have to make a
10 phone call to --

11 THE COURT: I would ban everybody from using
12 Twitter --

13 MS. FERKO: Your Honor --

14 THE COURT: -- regardless of anything.

15 If the probation officer asks him for all the
16 post cards he has gotten in the last six months, he will
17 deliver all the postcards to him. In that sense, he may
18 monitor his mail.

19 MR. ADLER: We have no problem, as part of the normal
20 supervision duties of the probation office. If they come to
21 visit his house and they say, Let me see your computer,
22 Mr. Khan will comply with that, of course, and the same for the
23 phone and any other electronic devices.

24 MS. FERKO: That's all we are asking, Your Honor.

25 THE COURT: And if he gets two phones, give them both

1 of them. And he is forbidden absolutely from buying disposable
2 phones.

3 MS. FERKO: Yes, Your Honor.

4 MR. ADLER: Yes, Your Honor.

5 THE COURT: He needs to do some community service. I
6 don't know whether I addressed that last time.

7 MS. FERKO: I don't believe so, Your Honor.

8 THE COURT: I like what he is doing, as long as the
9 program works, but sometimes programs run off the tracks and it
10 becomes religious. I'm not against religious programs, but I'm
11 not ordering him to do that. The best, which is in serious
12 need, is to teach young people English. If you are bilingual,
13 there are a lot of people who need your help. And get them
14 young because, otherwise, they will end up doing crazy things,
15 crazier things.

16 Anything else from the government?

17 MS. FERKO: Your Honor, if that is the pronouncement
18 of your sentence, we just need to object to it.

19 THE COURT: Gosh, really? Thank you. You are always
20 welcome to object to what I do.

21 MS. FERKO: Thank you, Your Honor.

22 Your Honor, we would object to the imposition of
23 this 18-month sentence followed by the five years of supervised
24 release. Your Honor, the United States believes that whether
25 that is based upon the 3553(a) guidelines, Your Honor, that is

1 not a reasonable sentence in light of Mr. Khan's actions and in
2 light of the guidelines -- of the sentencing guidelines, even
3 though it is only --

4 THE COURT: The average age of people convicted under
5 that Act is 26.

6 MS. FERKO: Yes, Your Honor. I'm aware.

7 And, Your Honor, we also would object to the
8 downward departure.

9 Thank you, Your Honor.

10 MR. ADLER: Judge, I just want to make clear for the
11 purposes of the Fifth Circuit, in case we're headed that way
12 again, that part of your decision today is based on a policy
13 disagreement with the sentencing guideline calculations, or at
14 least the Commission's determination of how the guidelines
15 should be calculated.

16 The Fifth Circuit has a case called
17 Mondragon-Santiago from 2009 where it said district courts
18 certainly may disagree with the guidelines for policy reasons
19 and may adjust a sentence accordingly.

20 I just want to make sure that is part of your
21 decision today, as well?

22 THE COURT: Yes. To the extent that I have any idea
23 what they were thinking when they came up with parts of that,
24 especially the absolutely arbitrary giving people criminal
25 histories that they don't have, I feel very bad about playing

1 let's pretend with people's lives. And so, if they have a
2 criminal history, I will use it. If they don't, it shouldn't
3 be used.

4 PROBATION OFFICER: Special assessment?

5 THE COURT: And you have to pay a \$100 tax.

6 MR. ADLER: Yes, Your Honor.

7 THE COURT: He didn't already do it?

8 MS. FERKO: Your Honor, I think it was remitted last
9 time.

10 THE COURT: Oh, well. I guess that's res judicata.

11 MS. FERKO: What is that, Your Honor?

12 THE COURT: That's res judicata then. I can't change
13 it.

14 Mr. Khan, you have the right to appeal. You have
15 the right to have a lawyer appointed for your appeal and you
16 can appeal without paying costs. There is a long, complicated
17 statement about that on the back -- or on the front. Please
18 read it. If you understand it, sign it.

19 You understand it is no reflection on you?

20 MS. FERKO: Yes, I do, Your Honor.

21 THE COURT: Okay. I just want to make sure.

22 Anything else, ma'am?

23 MS. FERKO: Nothing, Your Honor. That completes my
24 business. If I may be excused?

25 THE COURT: Ms. Kalluri did a beautiful job.

1 MS. KALLURI: Thank you, Your Honor.

2 THE COURT: I love lawyers who don't talk.

3 Any questions, Mr. Khan?

4 THE DEFENDANT: No, sir. Thank you.

5 THE COURT: All right. Straight and narrow. He will
6 explain what that means.

7 Thank you, Counsel.

8 We will take a five-minute recess.

9 *(Court adjourned at 2:38 p.m.)*

10 * * * *

11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled cause.

13 Date: January 3, 2020

14 */s/ Mayra Malone*

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16 Mayra Malone, CSR, RMR, CRR
17 Official Court Reporter
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